

SOPB – General Recommendations

1. Review of RCW Chapter 71.09 – Sexually Violent Predators

-Dan Yanisch & Keri Waterland

The Community Protection Act that provided for the civil commitment of individuals deemed “sexually violent predators” was initially implemented in 1990. In the 26 years since then, the system designed to identify, contain, and treat these individuals has grown considerably. The professional literature has burgeoned, and so have the complications and fears related to assisting a person viewed as sexually dangerous back into the community. Legislation and lawsuits have regularly revisited RCW 71.09, making it a hodge-podge of statutory requirements without a coherent center. Public opinion and political will have impinged on making any significant changes to this law, other than to make it more stringent and restrictive.

In order to maintain the constitutionality of the law and the Special Commitment Center (SCC) program, a Federal injunction was implemented in 1994 and finally lifted in 2007. A primary component of lifting that injunction was the creation of a viable means for residents to transition back into the community. The court found that such a program, involving indefinite commitment of residents, must provide appropriate structure and an exit plan for individuals participating in treatment. Two Secure Community Transition Facilities (SCTFs--located in Pierce and King Counties) have now been active for more than a decade. These facilities are now experiencing growing pains, and significant staffing restrictions. We now know much more about the type of individual that is being treated and transitioned. Information about recidivism risk has grown considerably, and the processes to keep someone detained under this law have grown unwieldy and sometimes counterproductive. More residents have been participating in treatment, thereby lowering their level of risk, and making them eligible for LRA placement. The number of such cases that the Department of Corrections must investigate and supervise is steadily increasing. For example, in 2002 there were nine active LRA cases in the community, while currently there are 49 active cases, and at least a dozen more under consideration.

With these issues in mind, it is our recommendation that an independent body comprised of individuals with specific knowledge in the SVP arena (judges, prosecutors, defense attorneys, treatment providers, Community Corrections Officers, SCC staffers, DOC and DSHS administrators) be asked to review RCW 71.09 in its entirety. It is believed that a thoughtful and careful review of the statute would result in positive suggestions to revise the entire system without impacting community safety. At a cost of well over \$150,000 per inpatient resident per year, this has been a very expensive and cumbersome law to maintain. Once the person begins a transition process and requires escort staff, DOC investigations and supervision, etc., the cost increases even more.

Areas to look at would include:

- Location of the Total Confinement Facility and Secure Community Transition Facilities.
- Legal procedures and expenses including the possibility of creating an Administrative Law panel of judges.
- Specialty areas for adolescents, females, the elderly, and the mentally ill / intellectually disabled. Can ways be developed to adequately treat and transition these individuals elsewhere?
- Transition needs, including stepdown LRA options.
- Tolling of supervision once a person is placed in the community, as opposed to one of the SCTF's.
- Investigation of proposed addresses, including creation in statute of a sound process and structure specific to the investigations, supervision, and arrest authority of DOC, liability increases for the State substantially.

Now that we have a quarter century of experience dealing with this statute, we know that these and other areas within RCW 71.09 may benefit from closer scrutiny and revision. We recommend that a specialty panel be created to specifically review and identify areas for improvement, with a focus on maintaining public safety while also controlling costs.

2. Juvenile Sex Offender Management

-Jedd Pelander & Brad Meryhew

In 2009 the Sex Offender Policy Board (SOPB) made several recommendations related to sex offender registration and community notification for juvenile sex offenders based on our review of the relevant social science research at that time. Some of those recommendations were enacted into law and several were not enacted. The SOPB continues to identify research which suggests a need for juvenile sex offenders to be treated differently than their adult counterparts. The SOPB's review of other states' practices and policies regarding registration and community notification found that most states treat juveniles differently. Currently, Washington state does not separate the two populations for registration and community notification purposes though Washington does allow for certain juvenile offenders to petition for the relief of the duty to register contingent on several criteria.

As outlined in the Sex Offender Policy Boards 2009 full report, the key finding regarding juveniles states, *"Youth who have sexually offended are different from adults who commit sex offenses in part, because of ongoing brain and neurological development. Therefore, sex and kidnapping offender laws regarding juveniles and public policy should reflect their unique amenability to treatment and vulnerability to collateral consequences due to their ongoing development."* Based on this finding by the SOPB, and the continued discovery of research in support of treating juveniles differently; the SOPB recommends that Washington delve further into this area of study and consider best practices for providing treatment, assessing risk, and community safety for juveniles who commit sexual offenses.

Additionally, new SORNA regulations regarding the registration of juveniles persuaded the Board to make the recommendation for further SORNA compliance by looking into SORNA's requirements for juvenile registration. As of now, SORNA only requires the registration of juveniles under the age of 14 in limited circumstances. This is in line with current research mentioned above, regarding the ability to rehabilitate juvenile offenders. The recommendation to further review juvenile registration in Washington was formally made to the Governor's Policy Office on July 25, 2016.

3. Additional issue for future consideration

-Michael O'Connell

In recent years, the Sex Offender Policy Board has heard of more and more cases where state agencies avoid making decisions or offering opinions to change conditions of supervision, especially for registered sex offenders in community placement.

While the official policy of the agency may be otherwise, the implicit practice seems to be to never implement or recommend less restrictive conditions, regardless of how well the individual may be currently performing and despite evidence the changes are likely to advance treatment goals and community reintegration and thus improved community safety.

Sometimes case management issues can be resolved by having the matter brought to a court, which then issues an order for supervision and management revisions. This approach requires the court to interpret whether the agency's stated objections to changes in conditions are objectively offered.

It has become apparent this problem is more than typical bureaucratic inertia or occasional risk-aversion by certain individuals. This pattern seems to be, at least in part, the result of the Washington State Legislature having waived the doctrine of sovereign immunity by statute. This and subsequent changes were described in a 2005 law review article (Michael Tardif & Rob McKenna, 2005. Washington State's 45-Year Experiment in Government Liability, 29 Seattle University Law Review. 1, 50-52.)

The Sex Offender Policy Board recommends an examination of whether liability concerns have interfered with state agencies employing effective case management. A review of this issue could include an examination of how Washington compares to other states in this regard.

4. Public Disclosure

-James McMahan & Jamie Yoder (current edits: Leah Fisher)

In December 2015, the SOPB issued a unanimous recommendation that sex offender registration information should be exempt from public disclosure (that RCW 4.24.550 is/should be an "other statute" under RCW 42.56). The SOPB adopted findings that this information has been held from public disclosure for decades, and this has proven to be in the best interests of the public,

especially those who are victims of sexual assault. In addition, this information may enhance the safety of the community, and that of registered sex offenders – both in terms of facilitating offenders’ successful reintegration into the community and in terms of their physical safety.

However, the Washington State Supreme Court held in *Doe. v. Washington State Patrol* that RCW 4.24.550 does not serve as an “other statute” under RCW 42.56, and sex offender registration information is not exempt from public disclosure. In its ruling, the Court specifically noted the following:

“In the 2015 regular session, the legislature rejected an amendment that would have deleted subsection (9) in its entirety and replaced it with “[s]ex offender ... registration information is exempt from public disclosure under chapter 42.56 RCW.” Compare S.B. 5154, 64th Leg., Reg. Sess., at 5 (Wash. 2015), with SUBSTITUTE S.B. 5154, 64th Leg., Reg. Sess., at 6 (Wash. 2015) (LAWS OF 2015, ch. 261, § 1). Although a failed amendment means little, it does show that the legislature knows how to exempt sex offender records under the “other statute” provision of RCW 42.56.070(1) if it wishes to do so. If there were any doubt as to whether or not RCW 4.24.550(3)(a) exempts sex offender registration records from PRA requests, subsection (9) resolves it. If not dispositive of this case on its own, subsection (9) at the very least confirms our conclusion that RCW 4.24.550(3)(a) is not an “other statute” exempting sex offender records.”

Following this decision, real consequences have come to light. The SOPB has heard from a multiple Level 1 sex offenders, who have expressed concern over their employment, housing, and social relationships. Moreover, this information is now being published on various websites, potentially interfering with the successful reintegration of Level 1 offenders across the state. The SOPB strongly advises that this be reconsidered in the 2017 session, and that legislation be enacted to exempt sex offender registration information from public disclosure. Specifically, the SOPB recommends that:

- A. RCW 4.24.550 be amended to include the following sentence: Sex offender and kidnapping offender registration information is exempt from public disclosure under chapter 42.56 RCW.
- B. RCW 42.56.240 be amended to include the following sentence: The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter: Information compiled and submitted for the purposes of sex offender and kidnapping offender registration pursuant to RCW 4.24.550 and 9A.44.130, or the statewide registered kidnapping and sex offender website pursuant to RCW 4.24.550, regardless of whether the information is held by a law enforcement agency, the statewide unified sex offender notification and registration program under RCW 36.28A.040, the central registry of sex offenders and kidnapping offenders under RCW 43.43.540, or another public agency.

5. The RNR Approach and Policy Implications

-Jeff Patnode & Jeff Landon

In Washington state, significant resources are allocated to the treatment and management of lower risk sexual offenders. In some instances, this means allocation of treatment resources, supervision funding, and registration length of time based on an offense of conviction. This is not a sound fiscal practice as research shows the highest risk offenders should receive the most intensive supervision and highest level of treatment in order to maximize the cost-benefit to the taxpayers and more effectively utilize a very limited resource.

One of the most significant examples is lifetime supervision, which is not based on risk to sexually reoffend. Just as Washington state has made a conscientious decision to not be in compliance with tier-based leveling as required under SORNA, continuing to provide programming, treatment and supervision based on static offense is contraindicated by empirical research. Research has consistently shown that providing correctional and law enforcement resources based on static offense provides a false sense of public safety as this is a poor predictor of future sexual and general recidivism. The SOPB recommends changes in policy to reflect and consistently apply RNR principles across the criminal justice continuum, particularly as it applies to sexual offenders.

More than a decade's worth of research and practice have consistently demonstrated the efficacy and best practice of applying a risk, needs, responsivity (RNR) model to prioritize correctional resources. The Principles of Effective Intervention prescribe that the allocation of resources towards higher risk offenders produces the greatest impact on recidivism reduction (WSIPP, 2006). Some studies suggest the targeting of lower risk offenders for high intensity treatment may actually increase their risk to re-offend by taking offenders from protective factors (family, employment, prosocial peers) and placing them with more criminogenic offenders. The Washington State Department of Corrections has utilized an RNR system for assigning programming and community supervision for several years, however, the RNR model has not been systematically applied to our state's sex offender management system. There is consensus in the field of sex offender research and management that sexual offenders present among the lowest rates of crime specific recidivism (citation, what study do we want to use? see lit review).

In addition to risk, the RNR model aims to improve treatment and further reduce recidivism by assessing an offender's criminogenic needs; those factors which are strongly correlated with an offender's risk. Various studies show that programs targeting at least four to six criminogenic needs can reduce recidivism by approximately 30% (Latessa, Edward J., & Lowenkamp, Christopher, 2005). Criminogenic needs are general focused around "The Central Eight". The first four are often referred to as "The Big Four" as they are associated with the largest decline in

recidivism: History of Antisocial Behavior, Antisocial Personality, Antisocial Cognition, and antisocial peers. The remaining four include family/marital life, school/work, leisure and recreation, as well as substance abuse (Andrews, D.A., Bonta, J., & Wormith, J.S., 2006). In short, the RNR model assesses risk to determine who needs treatment, evaluates their criminogenic needs to determine what to treat, and also evaluates responsivity to determine how to most effectively administer treatment to the offender.

The Board recommends a comprehensive review of our sex offender management system, allowing us to look at the primary components to identify those areas in which resources are allocated in ways that are inconsistent with an RNR scheme. These components include but are not limited to RCWs, state criminal justice agencies policies and procedures, and funding mechanisms related to the treatment of the sex offender population.

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